PP v. MOHAMED DANNY MOHAMED JEDI

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
AHMADI ASNAWI JCA
KAMARDIN HASHIM JCA
[CRIMINAL APPEAL NO: W-05(H)-390-10-2016]
22 JANUARY 2018

CRIMINAL LAW: *Penal Code – Section 130Q(1) – Dealing with terrorist property – Accepting monies in personal bank account to be distributed to individuals involved in terrorist act – Sentencing – Four years imprisonment from date of arrest – Appeal by prosecution – Factors considered by High Court – Plea of guilt – Indirect participation – Whether severity of offence outweighed accused's plea of guilt – Whether sentence grossly inadequate – Whether sentence should be enhanced*

CRIMINAL PROCEDURE: *Sentence – Appeal against – Appeal by prosecution – Dealing with terrorist property – Accepting monies in personal bank account to be distributed to individuals involved in terrorist act – Four years imprisonment from date of arrest – Factors considered by High Court in imposing sentence – Plea of guilt – Indirect participation – Whether severity of offence outweighed accused's plea of guilt – Whether sentence grossly inadequate – Whether sentence should be enhanced – Penal Code, s. 130Q(1)*

The respondent was the elder brother of one Muhammad Wanndy Mohammed Jedi, the Malaysian Islamic State ('IS') militant leader based in Syria. The respondent received instruction from Muhammad Wanndy through "WhatsApp" to accept cash deposit into his Maybank account and to distribute it to several individuals in Iraq *via* the Western Union service and he would be given between RM100 and RM300 for each transaction he made. A total of RM12,130 was deposited into the respondent's Maybank account between 28 January and 5 March 2016. The respondent was then charged under s. 130Q(1) of the Penal Code. The respondent pleaded guilty to the charge. The Judicial Commissioner ('JC') convicted the respondent and sentenced the respondent to four years imprisonment from the date of arrest. Disenchanted with the said sentence, the Public Prosecutor ('PP') appealed for an enhancement of the sentence on the grounds that the JC's decision was influenced by (i) the fact that respondent pleaded guilty upon the first available opportunity; (ii) the respondent's participation was indirect; and (iii) the decision in *PP v. Ummi Kalsom Bahak.*

Held (allowing appeal; enhancing sentence to eight years with effect from the date of arrest)
Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) The JC had improperly minimised the seriousness of the offence. While those who assist in financing terrorism may not be directly involved in the violence and mayhem that characterise terrorist activities, their

culpability remained high. The spate of terrorist attacks had continued to rise, and the correlation between such attacks and terrorism financing was significant. They require such resources to operate their training facilities, acquire weapons and new adherents; and otherwise to perpetuate their nefarious activities. While the respondent had no direct involvement with the terrorist group, his action carried risk of indirectly enhancing the abilities of the group. (para 18)

(2) The reliance on the case of *Ummi Kalsom Bahak* was misplaced and was clearly distinguishable as the case involved an inchoate offence wherein the offence of giving support to the commission of a terrorist act has yet to be completed, in which case the maximum jail term would be 15 years; whilst the maximum term applicable to the respondent's case was 20 years. In the present case, the respondent had followed a systematic plan and executed it meticulously. He collected the money over a period of time and wired small amounts to different individuals in several transactions. The respondent had used generic terms such as 'pembelian barang' or 'goods payment' to ultimately disguise the funds. All these were done discreetly to avoid scrutiny and to prevent potential detection. (para 22)

(3) The JC had attached considerable weight to the fact that respondent had pleaded guilty. While it is generally accepted that an accused person should be given credit for pleading guilty, there can be no automatic rule that a guilty plea on its own entitled an accused to a lesser punishment. (para 24)

(4) Malaysia has an international obligation to deter terrorism on the world front, and Malaysian courts must assist in fulfilling that obligation by ensuring severe punishment for terrorist offences to reflect the abhorrence and condemnation of the Malaysian community against such crime. Therefore, severity of the offence herein outweighs the respondent's plea of guilty. In the circumstances, the sentence of four years imprisonment imposed by the JC was manifestly inadequate taking into account the nature of the offence, the manner in which it was planned and committed and the motive for the commission of the offence. (paras 25, 26 & 29)

Bahasa Malaysia *Headnotes*

Responden adalah abang kepada seorang bernama Muhammad Wanndy Mohammed Jedi, pemimpin militan Negara Islam Malaysia ('IS') yang berpangkalan di Syria. Responden menerima arahan daripada Muhammad Wanndy menerusi "WhatsApp" untuk menerima wang tunai dalam akaun Maybanknya dan mengedarkannya kepada beberapa individu di Iraq melalui perkhidmatan Western Union dan dia akan diberikan antara RM100 dan RM300 untuk setiap transaksi yang dibuatnya. Sejumlah RM12,130 telah dimasukkan ke dalam akaun Maybank responden antara 28 Januari dan

5 Mac 2016. Responden kemudiannya dipertuduh di bawah s. 130Q(1) Kanun Keseksaan. Responden mengaku bersalah terhadap pertuduhan tersebut. Pesuruhjaya Kehakiman ('PK') mensabitkan responden dan menjatuhkan hukuman penjara empat tahun dari tarikh penangkapan. Terkilan dengan hukuman tersebut, Pendakwa Raya ('PR') merayu untuk penambahan hukuman dengan alasan bahawa keputusan PK dipengaruhi oleh (i) fakta bahawa responden mengaku bersalah atas peluang pertama yang diperoleh; (ii) penyertaan responden adalah secara tidak langsung; dan (iii) keputusan dalam *PP v. Ummi Kalsom Bahak*.

Diputuskan (membenarkan rayuan; menambahberatkan hukuman kepada lapan tahun penjara dari tarikh tangkap)
Oleh Mohd Zawawi Salleh menyampaikan penghakiman mahkamah):

(1) Pesuruhjaya Kehakiman telah meminimumkan keseriusan kesalahan tersebut secara salah. Walaupun mereka yang membantu membiayai keganasan mungkin tidak terlibat secara langsung dalam keganasan dan keadaan huru-hara yang mencirikan kegiatan pengganas, kesalahan mereka tetap tinggi. Serangan pengganas terus meningkat, dan korelasi antara serangan dan pembiayaan keganasan adalah penting. Mereka memerlukan sumber-sumber untuk mengendalikan kemudahan latihan mereka, memperoleh senjata dan ahli-ahli baru; dan sebaliknya untuk mengekalkan aktiviti jahat mereka. Walaupun responden tidak mempunyai penglibatan langsung dengan kumpulan pengganas, tindakannya membawa risiko secara tidak langsung dengan meningkatkan kebolehan kumpulan tersebut.

(2) Kebergantungan terhadap kes *Ummi Kalsom Bahak* adalah salah dan jelas boleh dibezakan kerana kes itu melibatkan kesalahan yang belum disempurnakan di mana kesalahan memberi sokongan bagi tindakan pengganas masih belum selesai, dan dalam hal ini hukuman penjara maksimum adalah 15 tahun; manakala tempoh maksima yang digunakan untuk kes responden adalah 20 tahun. Dalam kes ini, responden telah mengikuti rancangan yang sistematik dan melaksanakannya secara teliti. Dia mengutip wang tersebut dalam tempoh masa yang tertentu dan mengedarkan jumlah tertentu kepada individu yang berlainan dalam beberapa transaksi. Responden telah menggunakan istilah generik seperti 'pembelian barangan' atau 'pembayaran barang' untuk menyamarkan dana tersebut. Semua ini dilakukan dengan berhati-hati untuk mengelakkan pengawasan dan mencegah potensi pengesanan.

(3) Pesuruhjaya Kehakiman telah meletakkan pertimbangan yang besar pada fakta bahawa responden telah mengaku bersalah. Walaupun secara umumnya adalah diterima bahawa seseorang tertuduh patut diberikan kredit kerana mengaku bersalah, tiada peraturan bahawa suatu pengakuan bersalah akan memberikan tertuduh hak automatik untuk hukuman yang lebih rendah.

(4) Malaysia mempunyai kewajipan antarabangsa untuk menghalang kegiatan keganasan di seluruh dunia, dan mahkamah Malaysia mesti membantu memenuhi kewajipan tersebut dengan memastikan hukuman berat untuk kesalahan pengganas bagi mencerminkan kebencian dan kutukan kuat masyarakat Malaysia terhadap jenayah tersebut. Oleh itu, keseriusan kesalahan melebihi pengakuan bersalah responden. Oleh yang demikian, hukuman penjara empat tahun yang dijatuhkan oleh PK jelas tidak mencukupi, mengambil kira sifat kesalahan, cara bagaimana ia dirancang dan dilakukan dan motif untuk melakukan kesalahan itu.

Case(s) referred to:

Bachik Abdul Rahman v. PP [2004] 2 CLJ 572 CA ***(refd)***
Bhandulananda Jayatilake v. PP [1981] 1 LNS 139 FC ***(refd)***
Channon v. The Queen [1978] 20 ALR 1 ***(refd)***
Dhananjay Chatterjee @ Dhana v. State of West Bengal [1994] 2 SCC 220 ***(refd)***
Mohd Abdullah Ang Swee Kang v. PP [1987] 2 CLJ 405; [1987] CLJ (Rep) 209 SC ***(refd)***
Mukesh & Anor v. State of NCT of Delhi & Ors (Criminal Appeal Nos: 609-610 of 2017) SC ***(refd)***
PP v. Ling Leh Hoe [2015] 4 CLJ 869 CA ***(refd)***
PP v. Loo Choon Fatt [1976] 1 LNS 102 HC ***(refd)***
PP v. Mohd Nooh Yusof & Ors [1993] 4 CLJ 275 HC ***(refd)***
PP v. Mohd Rosmadi Che Daud [2015] MLRHU 1 ***(refd)***
PP v. Muamar Gadaffi Mohamad Shafawi [2017] 1 LNS 516 CA ***(refd)***
PP v. Muhammad Kasyfullah Kassim [2017] 1 CLJ 63 CA
PP v. Rohaimi Abd Rahim & Anor (Criminal Appeal No.: W-05(H)-83-02-2016) (Unreported) ***(refd)***
PP v. Ummi Kalsom Bahak [2015] 7 CLJ 503 HC ***(dist)***
PP v. Yazid Sufaat & Ors [2014] CLJ 670 CA ***(refd)***
R v. Ipeelee [2012] 1 SLR 433 ***(refd)***
Sumer Singh v. Surajbhan Singh v. Others [2014] 7 SCC 323 ***(refd)***
Wong Kai Chuen Philip v. PP [1990] 1 LNS 146 ***(refd)***

Legislation referred to:

Penal Code, ss. 130J(1)(a), 130Q(1), 511

For the appellant - Dhiya Syazwani Izyan Mohd Akhir; DPP
For the respondent - Arik Zakri Abdul Kadir; M/s The Chambers of Arik & Kamal

[Appeal from High Court, Kuala Lumpur; Criminal Trial No: 45SO-13-7-2016 (overruled).]

Reported by Sandra Gabriel

JUDGMENT

Mohd Zawawi Salleh JCA:

Introduction

[1] This appeal is set in the context of the sentencing of an offender who engages in a terrorist financing offence.

[2] The charge against the respondent read as follows:

Bahawa kamu di antara 28 Januari 2016 hingga 5 Mac 2016 di akaun Maybank nombor 154110259028 yang beralamat di Maybank Cawangan Ayer Keroh, G-6, Lebuh Ayer Keroh, Hotel King, dalam daerah Melaka Tengah, dalam Negeri Melaka, telah dengan pengetahuan mengendalikan secara tidak langsung harta pengganas yang bernama Muhammad Wanndy bin Mohamed Jedi (No. KP: 901116-04-5293), dengan cara membenarkan kemasukan wang sebanyak RM12,130 dan pengeluaran wang sebanyak RM10,000 dari akaun Maybank berkenaan bagi manfaat pengganas tersebut yang merupakan satu kesalahan di bawah seksyen 130Q(1) Kanun Keseksaan dan boleh dihukum di bawah peruntukan yang sama.

[3] The respondent pleaded guilty and was duly convicted under s. 130Q(1) of the Penal Code. After having considered the written and oral submissions by the parties, the learned Judicial Commissioner ("JC") sentenced the respondent to four years imprisonment from the date of arrest (18 May 2016).

[4] Disenchanted with the said sentence, the Public Prosecutor ("PP") has now appealed to this court urging for enhancement of the sentence.

[5] For the reasons that follow, we found there was merit in this appeal and accordingly we allowed the appeal by the PP. The sentence of four years imprisonment imposed by the High Court was set aside and substituted with an imprisonment term of eight years with effect from the date of arrest. (18 May 2016).

The Factual Background

[6] Shorn of unnecessary details, the relevant facts giving rise to this appeal may be shortly stated as follows:

(i) The respondent is the elder brother of Muhammad Wanndy Mohammed Jedi, the Malaysian Islamic State ("IS") militant leader based in Syria.

(ii) The respondent received instruction from Muhammad Wanndy through "WhatsApp" application to accept cash deposit into his Maybank account at the Ayer Keroh branch in Malacca.

(iii) The respondent was also told to withdraw the money and distribute it to several individuals in Iraq *via* the Western Union service and he would be given between RM100 and RM300 for each transaction he made.

(iv) On 28 January 2016 and 29 January 2016, one Azuddin bin Mahmud had deposited RM1,000 and RM2,500 respectively into the respondent's Maybank account. On 29 January 2016, the respondent withdrew a sum of RM3,300 from an automated teller machines (ATM) located at Port Klang, Selangor. On the same day, the respondent made a transfer of RM3,200 (inclusive of GST and processing fee) to one Hazim Sabri Ahmad in Iraq *via* Wester in Union service.

(v) On 18 February 2016, one Bukhori bin Che Noor deposited RM4,300 into the respondent's bank account. On the same day, he withdrew a sum of RM4,300 from an ATM located at Kapar, Selangor. The respondent then made a transfer of RM4,100 (inclusive of GST and processing fee) to one Abdul Salam Yusof in Iraq *via* Western Union service.

(vi) On 3 March 2016, one Mohd Haniffa bin Syedul Akhar deposited RM2,400 into the respondent's bank account. On the same day, he withdrew a sum of RM2,400 from an ATM located at Sungai Buloh, Selangor. The respondent then made a transfer of RM2,300 (inclusive of GST and processing fee) to one Suaad Abbid El Ghani Ahmad in Iraq *via* Western Union service. On 5 March 2016, one Mohd Haniffa deposited RM1,930 into the respondent's bank account.

(vii) A total of RM12,130 was deposited into the respondent's Maybank account between January 28 and 5 March 2016. The respondent had withdrawn RM10,000 and distributed RM9,900 to those three individuals for the benefit of the terrorist concerned.

(viii) Police investigation showed that one Mohd Haniffa bin Syedul Akhbar, acting on the instruction from Muhammad Wanndy, had deposited RM2,400 and RM1,930 into the respondent's Maybank account on 3 March and 5 March 2016.

Findings Of The High Court

[7] The learned JC had addressed himself correctly on the general principles of sentence namely: (i) the question of public interest; (ii) the seriousness of the offence; (iii) the rampancy of the offence; (iv) the question of deterrence to the offender, and to would be offenders; (v) the background of the offender, and (vi) the plea of guilty. Several case laws were cited and referred to namely, *PP v. Mohd Nooh Yusof & Ors* [1993] 4 CLJ 275, *Mohd Abdullah Ang Swee Kang v. PP* [1987] 2 CLJ 405; [1987] CLJ (Rep) 209, *Wong Kai Chuen Philip v. PP* [1990] 1 LNS 146; [1991] 1 MLJ 32. In imposing the sentence that he did, the learned JC reasoned as follows:

> [15] Mahkamah ini sering memandang berat dengan kesalahan-kesalahan yang melibatkan keganasan. Ia harus dan wajar dikenakan hukuman yang berat dan berbentuk deteren seperti hukuman penjara. Walau bagaimanapun dalam menimbangkan hukuman terhadap Tertuduh, *Mahkamah mempertimbangkan rayuan Tertuduh tentang pengakuan bersalah yang dibuat di kesempatan yang awal sebaik sahaja kes ini ditetapkan untuk sebutan* di mahkamah (*Mohamed Abdullah Ang Swee Kang v. PP* [1987] CLJ (Rep) 209). Walaupun keseriusan dan kepentingan awam mengatasi faktor mitigasi Tertuduh, namun begitu hal kadar kes itu sudah harus diambil kira (*Wong Kai Chuen Philip v. PP* [1991] 1 MLJ 32).
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> [16] … Dari fakta kes sememangnya *Tertuduh telah melakukan kesalahan itu dengan cara yang tidak langsung* telah membenarkan akaunnya digunakan oleh Muhammad Wanndy yang merupakan adik Tertuduh yang berada di Syria. Tertuduh tanpa mengenali latarbelakang individu yang

memasukkan wang ke dalam akaunnya, Tertuduh kemudian menghantar wang ke individu yang tidak dikenali yang berada di Iraq dengan harapan mendapat sedikit ganjaran sebanyak RM100 hingga RM300 daripada transaksi yang dibuatnya. *Perbuatan secara tidak langsung ini kemudiannya didapati untuk kegunaan pengganas tidak sewajarnya dikenakan dengan hukuman penjara yang begitu lama,* malah dalam mitigasi Tertuduh beliau menyatakan wang yang disalurkan kepada adik beliau Muhammad Wanndy bin Muhamed Jedi adalah untuk kegunaan isteri beliau yang sarat mengandung. Dari fakta kes hanya dua transaksi wang yang dimasukkan oleh penama Mohd Haniffa bin Syedul Akhbar ke dalam akaun Tertuduh pada 3.3.2016 dan 5.3.2016 adalah atas arahan Muhammad Wanndy. Mahkamah ini mempercayai inilah wang yang diarahkan oleh adik Tertuduh untuk disalurkan bagi kegunaan Muhammad Wanndy. Dari hal keadaan secara tidak langsung terlibat dalam perlakuan mengendalikan harta pengganas dan memberi manfaat kepada pengganas ini, mahkamah ini seharusnya berhati-hati dalam mempertimbangkan tempoh hukuman penjara diimbangi dengan faktor kepenting awam dan seriusnya kesalahan itu.

[17] Dalam kes *PP lwn. Ummi Kalsom Bahak* [2015] 7 CLJ 503 yang mana Responden telah disabitkan kerana cuba memberi sokongan kepada kumpulan pengganas ISIS di Syria, kesalahan di bawah Seksyen 130J(1)(a), dibaca bersama Seksyen 511 Kanun Keseksaan dimana hukuman maksimum yang diperuntukkan adalah 30 tahun penjara, Responden telah dikenakan hukuman 2 tahun penjara. (emphasis added).

[8] It would appear that the decision of the learned JC was influenced by the following considerations:

(i) The respondent pleaded guilty upon the first available opportunity;

(ii) The respondent's participation was indirect; and

(iii) The decision in the *PP v. Ummi Kalsom Bahak* [2015] 7 CLJ 503.

The Appeal

[9] In reviewing the sentence, we reminded ourselves of trite law that punishment of offender falls within the discretion of the trial court. A court of appeal should be careful not to erode such discretion and can only interfere with the sentence and the discretion exercised by the trial court in certain limited instances.

[10] Generally it must be shown that the sentence is demonstrably unfit – either manifestly inadequate or grossly excessive or illegal or not a proper sentence having regard to all the facts disclosed on the record or which the court ought to take judicial notice. (See *Bhandulananda Jayatilake v. PP* [1981] 1 LNS 139; [1982] 1 MLJ 83; *PP v. Loo Choon Fatt* [1976] 1 LNS 102; [1976] 2 MLJ 256).

[11] In *PP v. Ling Leh Hoe* [2015] 4 CLJ 869, this court had this to say:

A [13] At the outset, we must say that the contention of the learned counsel for the respondent that the prosecution should not have appealed against the sentence is misconceived. The prosecution is entitled to file an appeal against sentence:

(a) Where the sentence reveals manifest inadequacy or inconsistency in sentencing as to constitute an error in principle;

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(b) Where it is necessary for the Court of Appeal to lay down principles for the governance and guidance of the lower courts;

(c) To enable the courts to establish and maintain adequate standards of punishment for crime;

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(d) To enable idiosyncratic views of the individual judge as to particular crimes or types of crimes to be corrected;

(e) To correct a sentence which is so disproportionate to the seriousness of the crime as to shock the public conscience; and

D (f) To ensure, as far as the subject matter permits, that there will be uniformity in sentencing.

[14] The appellate court can and will interfere in the sentence imposed by the lower court if it is satisfied that any of the following four grounds are made out:

E (a) The sentencing judge had made a wrong decision as to the proper factual basis for the sentence;

(b) There had been an error on the part of the trial judge in appreciating the material facts placed before him;

(c) The sentence was wrong in principle; or

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(d) The sentence imposed was manifestly excessive or inadequate.

[See *R v. Ball* [1951] 35 Cr App. R 164; *Loo Weng Fatt v. Public Prosecutor* [2001] 3 SLR 313 at [65]; *Public Prosecutor v. U I* [2008] 4 SLR (R) 500].

[12] Before us, learned Deputy Public Prosecutor ("DPP") mounted a G spirited attack on the sentence imposed by the learned JC. She vehemently argued that the severity of the offence and the aggravating factors warrants a lengthy custodial sentence. By sentencing the respondent to four years imprisonment for a terrorist related offence which the learned JC himself considered as serious, the learned DPP contended that His Lordship was H merely paying lip service to the principle of public interest. It was contended that the learned JC had failed to observe the trend of sentencing in relation to terrorist related offences under Chapter VIA of the Penal Code. She cited the Court of Appeal judgments in *PP v. Muhammad Kasyfullah Kassim* [2017] 1 CLJ 63, *PP v. Muamar Gadaffi Mohamad Shafawi* [2017] 1 LNS 516, *PP v. Rohaimi Abd Rahim & Anor* (Criminal Appeal No.: W-05(H)-83-02-2016) for I our consideration and comparison.

[13] In reply, learned counsel for the respondent submitted that this is not a case that warrants appellate intervention by this court. It was submitted that the learned JC in imposing the sentence which he did, had correctly applied the principles of law and took into consideration the totality of the facts and circumstances of this case. Learned counsel for the respondent cited the High Court judgments in *PP v. Ummi Kalsom Bahak* [2015] 7 CLJ 503 and *PP v. Mohd Rosmadi Che Daud* [2015] MLRHU 1 in support of the proposition that the appellate court should refrain from interfering with sentences imposed by the trial judge. Further, the respondent had pleaded guilty at the first available opportunity.

Our Findings

[14] It is trite law that the sentence must be proportionate to both the seriousness of the offence and the degree of responsibility of the offender. The concept of proportionality was explained in the Canadian Supreme Court case of *R v. Ipeelee* [2012] SCC13, [2012] 1 SLR 433 in para. 37 as follows:

> Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. … Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principles serves a limiting or restraining function and ensures justice for the offender.

[15] The protection of society is one of the important purposes of punishment under the principle of proportionality. In *Channon v. The Queen* [1978] 20 ALR 1, 5, the court stated:

> The necessary and ultimate justification for criminal sanctions is the protection of society from conduct which the law proscribes. Punishment is the means by which society marks its disapproval of criminal conduct, by which warning is given of the consequences of crime and by which reform of an offender can sometimes be assisted. Criminal sanctions are purposive, and they are not inflicted judicially except for the purpose of protecting society; nor to an extent beyond what is necessary to achieve that purpose.

[16] In the same vein, in *Sumer Singh v. Surajbhan Singh v. Others* [2014] 7 SCC 323, the Supreme Court of India, while elaborating on the duty of the court in imposing sentence for an offence, ruled that it is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of society and legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to social conscience. In a way, it is an obligation to the society which has reposed faith on the court of law to curtail the evil.

[17] In this instant appeal, the learned JC found that the respondent's indirect involvement did not justify the imposition of a lengthy sentence. The learned JC also found, in agreeing with learned counsel that the respondent was merely helping out his brother on humanitarian grounds and the money was meant to pay for the medical bills of Wanndy's pregnant wife.

[18] We found it difficult to appreciate this argument. With due respect, the learned JC had improperly minimises the seriousness of the offence. His Lordship had failed to take judicial notice that IS has been designated a terrorist organisation by the United Nations Security Council and many individual countries. While those who assist in financing terrorism may not be directly involved in the violence and mayhem that characterise terrorist activities, their culpability remains high. The spate of terrorist attacks has continue to rise, and the correlation between such attacks and terrorism financing is quite significant. They require such resources to operate their training facilities, acquire weapons and new adherents; and otherwise to perpetuate their nefarious activities. While the respondent had no direct involvement with the terrorist group, his action carries some risk of indirectly enhancing the abilities of the group.

[19] The impact of terrorist activities is explained in the Court of Appeal case of *PP v. Yazid Sufaat & Ors* [2014] CLJ 670 as follows:

> [23] An act of terrorism is a transnational phenomenon. It has no territorial limits. It transcends national borders. For instance, an act of terrorism may be planned or hatched within Malaysia with an intention to execute it outside Malaysia. The intention of SOSMA is, among others, to prevent Malaysia from being used as a terrorist haven. S. Rajendra Babu and GP Marthur JJ in *People's Union For Civil Libertties & Anor v. Union of India* AIR 2004 SC 456 aptly describe acts of terrorism as follows:
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> > The terrorist threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has become a challenge to the whole community of civilized nations. Terrorist activities in one country take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a government across another, and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to regional peace and security owing to its spill over effects. It is therefore difficult in the present context to draw a sharp distinction between domestic and international terrorism. Many happenings in the recent past caused the international community to focus on the issue of terrorism with renewed intensity.

[20] We associate ourselves with the above sentiments. Indeed, in the recent years, the IS has garnered international attention for its particularly ruthless attacks. It has been operating in Syria and Iraq and it now stands as one of the most dangerous terrorist group. The United Nation's Al-Qaida Sanctions Committee first listed IS in its Sanctions List under the name "al-

Qaeda in Iraq" on 18 October 2004, as an entity or group associated with al-Qaeda. On 2 June 2014, the group was added to its listing under the name "Islamic State in Iraq and the Levant". Since declaring its caliphate in June 2014, the IS has gone global and conducted hundreds of attacks in various countries other than Iraq and Syria, where its carnage has taken a much deadlier toll. Malaysia is not spared by the menace of IS. Over the past few years, hundreds were arrested by the Malaysian police suspected of having ties to the IS. Intelligence reports indicate that about 200 – 250 Malaysians have arrived in the Middle-East to fight alongside with the IS militants. The growing number of Malaysian IS supporters has led to the first terrorist attack against the country. On the wee hours on 28 June 2016, two attackers had launched a grenade attack at the Movida Bar in Puchong, Selangor and injured several members of the public. The police had confirmed that the attack was orchestrated by Muhammad Wanndy, the respondent's younger brother who was also responsible for recruiting Malaysians in becoming IS fighters since 2015.

[21] The learned JC relied heavily on the case of *Ummi Kalsom Bahak (supra)* where the accused in that case was sentenced to two years imprisonment for attempting to support the commission of a terrorist act, an offence under s. 130J(1)(a) of the Penal Code, read together with s. 511 of the same Code.

[22] With respect, we found that the reliance on the case of *Ummi Kalsom Bahak* was misplaced as the case at hand was clearly distinguishable from the former. In *Ummi Kalsom Bahak*, the accused had planned to travel to Syria and marry one Muhammad Aqif, an IS militant. However, she was arrested at KLIA2 en route to Brunei, Istanbul and Syria. It was an inchoate offence as the offence of giving support to the commission of a terrorist act has yet to be completed, in which case the maximum jail term would be 15 years; whilst the maximum term applicable to the respondent's case is 20 years. In our present case, the respondent had followed a systematic plan and executed it meticulously. He collected the money over a period of time and wired small amounts to different individuals in several transactions. He made withdrawals from ATMs at various locations. The respondent had used generic terms such as "pembelian barang" or "goods payment" to ultimately disguise the funds. All these were done discreetly to avoid scrutiny and to prevent potential detection.

[23] The amounts involved are not large, but every penny is a contribution to serious harm. Much havoc can be wreaked with inexpensive items. The cost of a terrorist attack can be modest, but the cost to society is far greater. The fundraising depends on people like the respondent who are prepared to facilitate the transactions to and from his bank account which benefited the Syria-based militant Muhammad Wanndy. The respondent's motives may have had a humanitarian aspect, but it is clear that he was aware that the money that he collected and wired would go to the terrorist group. This was

not a case of a vulnerable young person being lured or beguiled into criminal misconduct in which he was not inclined to participate. The respondent was a willing participant and took steps to provide support to the group.

[24] The learned High Court Judge appears to have attached considerable weight to the fact that respondent had pleaded guilty. While it is generally accepted that an accused person should be given credit for pleading guilty, there can be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment. In the case of *Bachik Abdul Rahman v. PP* [2004] 2 CLJ 572, Augustine Paul JCA (as he then was) stated at pp. 583-584 as follows:

> The circumstances in which a guilty plea will not have any weight are varied. The severity of the offence committed may outweigh the mitigating effect of a guilty plea (see *Loh Hock Seng & Anor v. PP* [1980] 2 MLJ 13; *PP v. Oo Leng Swee & Ors* [1981] 1 MLJ 247). Where public interest demands effect of a guilty plea must also give way (see *Gim Gek Yong v. PP* [1995] 1 SLR 537; *PP v. Govindnan a/l Chinden Nair* [1998] 2 CLJ 370). A guilty plea cannot also be a powerful mitigating factor when effectively no defence to the charge is available to the accused (see *PP v. Low Kok Wai* [1988] 2 CLJ 105; [1988] 2 CLJ (Rep) 268). If a plea of guilty is made too late in the trial it may also cease to have mitigating effect (see *PP v. Dato' Nallakaruppan Solaimalai* [1992] 2 CLJ 596). The absence of mitigating factors in favour of the accused like, for instance, the existence of previous convictions may also deprive the guilty plea of its effect. There can therefore be no automatic rule that a guilty plea on its own entitles an accused to a lesser punishment (see *PP v. Tia Ah Leng* [2000] 5 CLJ 614). Be that as it may, where there is a departure from the general rule the reason for not treating the guilty plea as a mitigating factor must be reflected in the grounds of judgment (see *Tan Lay Chen v. PP* [2000] 4 CLJ 492).

[25] We must emphasised that terrorism is a distinct category of criminal activity. It has no equal because it is motivated by rigid and intolerant ideologies, rather than financial gain, anger, or revenge. It is far more insidious in that it attacks our very way of life and seeks to destroy the fundamental values to which we ascribe-values that form the essence of our constitutional democracy. Malaysia has an international obligation to deter terrorism on the world front, and Malaysian courts must assist in fulfilling that obligation by ensuring severe punishment for terrorist offences to reflect the abhorrence and condemnation of the Malaysian community against such crime.

[26] We, therefore, are firmly of the view that the severity of the offence herein outweighs the respondent's plea of guilty. The sentence of four years imprisonment imposed by the learned JC was manifestly inadequate. In this regard, we take note of the observations made by the Indian Supreme Court in the case of *Dhananjay Chatterjee @ Dhana v. State of West Bengal* [1994] 2 SCC 220 at para 15:

> … Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

[27] Since the hearing of this appeal, this court has pronounced several judgments arising from appeals against convictions and sentences in relation to terrorist related offences. In *PP v. Muhammad Kasyfullah Kassim* [2017] 1 CLJ 63, the accused was convicted for his involvement in the militant movement of the IS. He had undergone militant training, participated in series of battle using firearms against President Bashar Al-Assad's regime. This court had increased his term of imprisonment from five years to 12 years. In the case of *PP v. Muamar Gadaffi Mohamad Shafawi* [2017] 1 LNS 516, this court had tripled the accused's five years jail term to 15 years for giving militant training to individuals willing to participate in terrorist activities. He had opened Facebook accounts using the names 'Iskandar Dzulquranain IS' and 'Ammar Rasuli Al-Jihadi' to spread the ideology of the Daesh terror group. In the case of *PP v. Rohaimi Abd Rahim & Anor* (Criminal Appeal No.: W-05(H)-83-02-2016), the first accused was sentenced to three years imprisonment for soliciting contributions to benefit the IS through blog Revolusi Islam.com; while the second accused was sentenced to three years imprisonment for conspiring with the first accused by allowing his Maybank account to be used in the blog. The duo were also sentenced to two years imprisonment each on a joint charge of arranging to facilitate acquisition and control of property for IS terrorist. This court had enhanced their prison sentence to 15 years on each charge, after allowing the prosecution's appeal for a heavier jail term.

[28] Before parting with this instant appeal, perhaps it would be appropriate for us to refer to the case of *Mukesh & Anor v. State of NCT of Delhi & Ors* (Criminal Appeal Nos: 609-610 of 2017), where the Indian Supreme Court observed:

> 116. … The courts are consistently faced with the situation where they are required to answer the new challenges and mould the sentence to meet those challenges. Protection of society and deterring the criminal is the avowed object of law. It is expected of the courts to operate the sentencing system as to impose such sentence which reflects the social conscience of the society. While determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or society's cry for justice. While considering the imposition of appropriate punishment, courts should not only keep in view the rights of the criminal but also the rights of the victim and the society at large.

A

Conclusion

[29] For the foregoing reasons, we are compelled to set aside the sentence imposed by the learned JC because the imprisonment sentence of four years was grossly and entirely inadequate taking into account the nature of the offence, the manner in which it was planned and committed and the motive for the commission of the offence. We, therefore, allowed the prosecution's appeal and set aside the sentence imposed by the High Court and substituted it with an imprisonment of eight years with effect from the date of arrest. So ordered.

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